



24 CFR Parts 5 and 576

[Docket No. FR-6152-N-02]

RIN 2506-AC53

Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs; Withdrawal; Regulatory Review

AGENCY: Office of the General Counsel, Department of Housing and Urban Development (HUD).

ACTION: Withdrawal of proposed rule.

SUMMARY: In accordance with the Presidential directive as expressed in the memorandum of January 20, 2021 from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” HUD is reviewing all its pending proposed rules to determine which should move forward. HUD has identified a proposed rule, “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs” that is inconsistent with the Executive Order entitled “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” and the Executive Order entitled “Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation.” This document informs the public that HUD has determined not to pursue this proposed rule previously published in the Federal Register. HUD will proceed to formally withdraw the rule from HUD’s upcoming Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions.

DATES: The proposed rule published at 85 FR 44811, July 24, 2020, is withdrawn as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington DC 20410.

FOR FURTHER INFORMATION CONTACT: Samuel F. Pearson-Moore, Assistant General Counsel, Office of Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10282, Washington DC 20410; telephone number 202–402–5138 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: In a memorandum dated January 20, 2021 and published in the Federal Register on January 28, 2021, the Assistant to the President and Chief of Staff, on behalf of the President, directed the heads of Executive Departments and Agencies to review “rules¹ that have been published in the Federal Register, or rules that have been issued in any manner, but have not taken effect . . . for the purpose of reviewing any questions of fact, law, and policy the rules may raise.” 86 FR 7424. On January 20, 2021, President Biden also issued Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which provides “that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” 86 FR 7009. Executive Order 13985 specifically defines “equity” to mean “consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”

¹ Rule has the definition set forth in 5 U.S.C. 551(4), to include any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

On January 20, 2021, President Biden also issued Executive Order 13988, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, which states that “[p]eople should be able to . . . secure a roof over their heads without being subjected to sex discrimination [and] . . . [a]ll persons should receive equal treatment under the law, no matter their gender identity or sexual orientation.” 86 FR 7023. In addition, Executive Order 13988 clarifies that “[i]n *Bostock v. Clayton County*, 590 U.S. ____ (2020), the Supreme Court held that Title VII’s prohibition on discrimination “because of . . . sex” covers discrimination on the basis of gender identity and sexual orientation . . . [and] [u]nder *Bostock*’s reasoning, laws that prohibit sex discrimination—including . . . the Fair Housing Act, as amended (42 U.S.C. 3601 et seq.), along with their respective implementing regulations—prohibit discrimination on the basis of gender identity or sexual orientation . . .”

In accordance with the Regulatory Freeze Memorandum, HUD is reviewing its proposed rules and has identified a proposed rule that is inconsistent with Executive Order 13985 and Executive Order 13988: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs (85 FR 44811, July 24, 2020). This document informs the public that HUD has determined not to pursue this proposed rule previously published in the Federal Register.

HUD’s Withdrawal of Proposed Rule

Accordingly, HUD will proceed to formally withdraw the following proposed rule from its Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs (85 FR 44811, July 24, 2020) (RIN 2506-AC53).

HUD’s Unified Agenda of Regulatory and Deregulatory Actions is available on Reginfo.gov and can be accessed at <https://www.reginfo.gov/public/do/eAgendaMain>.

Sasha Samberg-Champion,
Deputy General Counsel, Office of Deputy
General Counsel for Enforcement and
Fair Housing.

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